IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 599 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VENSI DHARMDAS ASSUDANI

Versus

PARVATIBEN VANSIMAL ASSUDANI

Appearance:

1. Criminal Revision Application No. 599 of 2001

PARTY-IN-PERSON for Petitioner No. 1 assisted by Mr Saiyed, Advocate as amicus-curiae.

MR SN SINHA for Respondent No. 1

MR.B.D DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/08/2002

ORAL JUDGEMENT

The revisioner - party-in-person is aggrieved by judgement and order rendered by Family Court No.4 in Criminal Misc. Application No. 5296 of 2000, directing revisioner to pay an amount of Rs. 500/- every month to present respondent No.1 who was the applicant in that matter which was an application for maintenance under the provisions of Section 125 of Code of Criminal Procedure.

2. The case of the revisioner in substance is that respondent No.1 - Parvatiben is not his lawfully wedded wife and therefore she is not entitled to claim maintenance, nor is he liable to pay maintenance. The trial Court has therefore committed an error in awarding maintenance.

3. The party-in-person has argued the case before this Court. Learned Advocate Mr. Saiyed also assisted the Court as amicus-curiae. According to the revisioner, there is no evidence of a legal marriage. Respondent No.1 and witness Vinod had deposed about the marriage, but they speak nothing about the "Saptapadi" and their version about the venue of marriage is also contradictory and doubtful. It was vehemently contended that respondent No.1 in her deposition during cross-examination has categorically admitted that her brothers were against the marriage and she could not take any action against the wishes of her brothers. He argued that she has also stated before Mahila Police that she is ready and willing to go if the revisioner accepts her and gives all rights of a wife. It was contended that if she was really wife of the revisioner, she would not have stated so. It was contended that the photographs purported to be of a marriage was only a drama to overcome the objection that may be raised by the brothers of respondent No.1. Last but not least, it was contended that the trial Court has issued notice of perjury against respondent No.1 and her witness Vinod, which is still pending.

3.1 On being specifically asked by this Court, revisioner had stated initially while advancing arguments, that he challenges only the findings of the trial Court on the question of marriage and not on quantum of maintenance. At this stage the party-in-person stood up and states that although he wants to challenge the aspect of marriage, he would also like to state that he is aged 66 years and he is hardly able to maintain himself and he is not able to look after himself. He is engaged in fire-wood business and not in the business of building material as stated by respondent No.1. He has deposited the amount of maintenance allowed

by borrowing the money from others as directed by this Court at the time of initial hearing.

3.2 Revision application is opposed to by learned Advocate Mr. Sinha for respondent No.1. He submitted that the finding of the Court below is based on findings of fact after proper and due scrutiny of evidence on record and this Court may not exercise its revisional jurisdiction. It was submitted that the revisioner stays in company of one Anandiben, but has refused to maintain respondent No.1. Mr. Sinha submitted that he has no instruction regarding any notice of perjury having been issued by the Court below. He submitted that considering the scope of revision, this Revision Application may be dismissed.

3.3 On aspect of marriage, Mr. Sinha has drawn attention of this Court to photographs and the finding of facts of the Court below, which reflects that marriage was solemnised between revisioner and respondent No.1, which has been accepted by the Court below after due consideration and therefore the Revision Application may be dismissed.

4. Mr. Desai, learned Additional Public Prosecutor appears for respondent No.2 - State of Gujarat.

5. This Court has gone through the record and proceedings of the case. When in substance the revisioner challenges the marriage part, evidence in that regard has to be seen. As observed by the Court below, there are photographs produced at Ex. 20. This Court has inspected Ex.20 to find that there was ceremony of "Sapthapadi" before holi-fire. As is reflected from the photographs, it also appears that the ring ceremony was also performed. The venue indicates that it is in Shiv temple. Presence of holi-fire is visible in the photograph and ceremony of Sapthapadi is also seen in the photographs. This Court therefore has no reason for not accepting the finding of the Court below that photographs Ex. 20 indicate ceremonies of marriage between revisioner and respondent No.1. It is a finding of fact of the lower Court on basis of evidence on record. Besides this, there is evidence of respondent No.1 and witness Vinod. Respondent No.1 in her deposition has stated in terms that the marriage was solemnised between her and the revisioner at Sardarnagar temple. It would be worthwhile to note that during cross-examination this assertion that the marriage was solemnised between revisioner and respondent No.1 in Sardarnagar temple has not been controverted. The cross-examination revolves

round the photographs but does not carry case of the revisioner any further that the photographs were only by way of a drama to overcome the opposition of the brothers of respondent No.1. The suggestions have been denied by respondent No.1 in this regard. There is no substance in argument that respondent No.1 has admitted in the cross-examination that the photograph is of a drama to overcome objection of her brothers.

5.1 Witness Vinod Ex.17 who happens to be respondent No.1's sister's son says that he was present at the marriage which was solemnised on 25th October, 1996. He gives details of persons who were present at the marriage. He says that one lady Anandiben stays with revisioner. Revisioner was formerly married to the elder sister of mother of this witness. During cross-examination the witness stated that the photographs were taken in the same manner as they were taken in other marriages. He denied the suggestion that the photographs were taken out in a private residential house. He also denied suggestion that the photographs were stage-managed to dupe the revisioner. He admits that a complaint was lodged by respondent No.1 with Mahila Police Station.

5.2 It is thus, clear that there is ample evidence on record to indicate that revisioner is married to respondent No.1, as has been held by the Court below.

5.3 Much was argued about the record before the Mahila Police Station, which is at Ex. 13. Emphasise was led on page 7 where respondent No.1 has stated that if revisioner accepts her as his lawful wife and fulfils her right as his wife, she is ready to compromise. It was therefore contended that till this statement was given there was no question of any matrimonial relation or wedlock. It is not possible to accept this contention for the reason that it was because of non-acceptance of the wedlock and denial of maintenance that respondent No.1 was required to approach the Mahila Police Station. It was because of the denial by the revisioner of the wedlock and denial of right of respondent No.1 that she was required to approach Police Station and clear her position that she is prepared to compromise if her rights are recognized by the revisioner. This statement, in no manner, can be interpreted in the manner suggested by the revisioner that there was no wedlock till then and it was given with a view that if the revisioner accepts her as his wife, she is prepared to compromise and therefore there was no wedlock prior thereto.

6. In view of the above discussion, there appears no

substance in the contention of the revisioner about respondent No.1 not being his wife, and no mistake is committed by the Court below either on facts or in law in accepting the wedlock between revisioner and respondent No.1.

7. Now coming to the quantum, though not forcibly argued of quantum of maintenance, it is contended that the revisioner is aged 66 years and is engaged in business of fire-wood and not of building materials as alleged. On earlier occasion the revisioner had submitted before this Court that since business of fire-wood is being carried out by one Anandiben, she would be in a position to give exact account of income and expenditure of the business and he therefore had proposed to file an affidavit of Anandiben. No such affidavit is filed till today. The party-in-person, at this stage, says that he has brought the affidavit and wants to place it on record. The affidavit produced on record is not in fact an affidavit at all. It is not sworn before an officer who is authorised to give oath. It is stated therein however, that on an average there is a business of about 100 to 125 rupees and no accounts are maintained. This is neither here, nor there. Against this, the evidence of respondent No.1 before the Court below indicates that his income is around Rs. 5000/- per month. He has denied a suggestion that he earns about Rs. 15,000/- per month out of business of building material. In maintenance application, the settled principle of law is that it is not the actual income but the ability to earn that is required to be taken into consideration. It is an admitted fact that revisioner is engaged in the business of fire-wood and the assessment of income made by the Court below hardly needs any interference by this Court. It would also be worth to note that initially the revisioner had categorically stated before this Court that he challenges only the finding on the marriage aspect and not the quantum of maintenance. In this view of the matter, this Court is not inclined to interfere with the order of maintenance on quantum aspect also.

7.1 As regards the contention that notice for perjury is issued by the trial Court, record indicates that notice is issued on application by the revisioner, party-in-person and not suo motu. There is nothing to indicate that the trial Court has even prima-facie, accepted the allegation in the said application. Be that as it may, issuance of that notice can have no bearing on this revision application. The contention is therefore not accepted.

7.2 Revision Application therefore must fail and the same is dismissed. Rule is discharged.

8. The Court places on record the appreciation of the services rendered by Mr. Saiyed as amicus-curiae in this matter.